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W.P.No.7945 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.7945 of 2022
and W.M.P.Nos.7941 & 7942 of 2022

The Headmistress and Correspondent
Beschi Higher Secondary School
Ulundurpet – 606 107,
Kallakurichi District.

...Petitioner

-Vs-

1. The Government of Tamil Nadu
Rep by its Secretary,
Department of School Education,
Fort St. George,
Chennai – 600 009.
2. The Commissioner of School Education,
College Road, Chennai – 600 006.
3. The Chief Educational Officer,
Chief Educational Office,
Kallakurichi – 606 202.
4. The District Educational Officer,
District Educational Office,
Ulundurpet – 606 107.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, calling for the
records relating to the impugned order passed by the third respondent



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Chief Educational Officer in O.Mu.No.2676/Aa5/2020 dated 15.12.2020 and the consequential proceedings issued by the fourth respondent DEO in O.Mu.No.2068/Aa3/2020 dated 18.03.2021, quash the same and further direct the third and fourth respondents to approve forthwith the appointment of A.Mercy Rani as B.T.Assistant (Math) in the petitioner school with effect from the date of her appointment viz., 04.07.2019, and release salary and all attendant benefits with effect from the said date.

For Petitioner : Mr.Godson Swaminathan
For M/s Issac Chambers
For Respondents
For R1 to R3 : Mr.S.Silambanan
Additional Advocate General
Assisted by Mr.S.Arumugam,
Government Advocate.

ORDER

The writ petition has been filed challenging the orders passed by the third and fourth respondents, thereby rejecting the proposal sent by the petitioner school for approval to the appointment of one A.Mercy Rani as B.T. Assistant (Math) in the petitioner school.

2. The petitioner school is administered by the congregation of Immaculate Heart of Mary, Pondicherry. It is a registered society under the TN Societies Registration Act and the petitioner school is a recognized Christian minority educational institution. There are 68



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teachers in the said school and out of 68 teaching posts, only 12 staff members receiving aid from the State Government. Apart from that there are two aided non teaching staff in the school. There are 1541 students studying in the aided stream and 571 students studying in the un-aided stream. Out of three posts of B.T. Assistants one incumbent viz., A.L.Mary Diana Sangeetha transferred on 03.07.2019 to another school under the same management viz., Little Flower Higher Secondary School, Chinna Salem.

3. The petitioner appointed one A.Mercy Rani as B.T. Assistant with effect from 04.07.2014. It is a sanctioned post of B.T. Assistant in Maths as determined by the third respondent in the staff fixation done for the academic year 2018-19 vide proceedings dated 17.10.2019. After her appointment, the petitioner had sent proposal to the fourth respondent by communication dated 20.01.2020. However, the fourth respondent by the proceedings dated 01.06.2020 returned the proposal for such reasons. After compliance, the petitioner resubmitted the proposal for the appointment of one A.Mercy Rani as B.T. Assistant. However, the third respondent rejected the proposal by the impugned order dated 15.12.2020 for the following reasons.



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“i) All the pages of the proposal for approval should be countersigned by the inspecting officer namely, the 4th respondent DEO.

ii) Confirmation letter of the 4th respondent DEO recommending that the BT Assistant (Maths) post is eligible to be filled up, should be enclosed.

iii) The copies of the educational certificates of the appointee should be countersigned by the inspecting officer namely, the 4th respondent DEO.

iv) Letters from the Secondary Grade Teachers who are working in the school (for not claiming promotion) have not been enclosed.

v) The proposal should be considered by the 4th respondent DEO as per GO. Ms. No. 165, School Education Department dated 17.09.2019.”

Hence, the petitioner school filed this present writ petition with the above said prayer.

4. Heard the learned counsel appearing on either side and perused the material placed before this Court.

5. On perusal of the counter affidavit revealed that when there



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is surplus posts available in the cadre of B.T. Assistant, no direct recruitment should be made. Further only teacher with “Teachers Eligibility Test (TET)” qualification alone has to be appointed as Secondary Grade or B.T. Assistants and any exemption from TET is not applicable to them. Further, the petitioner has not possessed TET qualification.

6. On perusal of records revealed that in pursuant to the interim order dated 09.04.2019, passed by the Division Bench of this Court in W.A.(MD).No.76 of 2018 etc., batch, the government passed order in G.O.Ms.No.165, School Education Department dated 17.09.2019, with regard to staff fixation. However, it was challenged and the said government order was suspended by the Hon'ble Division Bench of this Court by an order dated 20.09.2019 and the G.O.Ms.No.165, was declared to be inoperative and the authorities have to approve the appointment of the petitioner.

7. That apart, the Hon'ble Division Bench of the Court by an order dated 31.03.2021 in the batch of writ appeals in W.A.(MD).No.76



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of 2018 etc., held that, insofar as the minority institutions are concerned, if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength of such school or schools under corporate management or joint management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength. Therefore, the reasons stated by the fourth respondent while rejecting the proposal sent for approval to the appointment of the petitioner cannot be sustained and it is liable to be set aside.

8. In view of the above discussions, the impugned order dated



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15.12.2020 passed by the third respondent Chief Educational Officer in O.Mu.No.2676/Aa5/2020 and the consequential proceedings issued by the fourth respondent DEO in O.Mu.No.2068/Aa3/2020 dated 18.03.2021, are hereby set aside and the third and fourth respondents are directed to approve the appointment of the petitioner in the post of B.T. Assistant (Maths) with effect from 04.07.2019, with all monetary and service benefits, within a period of eight weeks from the date of receipt of a copy of this Order.

9. With the above directions, the Writ Petition stands allowed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

12.01.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
rts



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G.K.ILANTHIRAIYAN. J.

rts

To

1. The Secretary,
Government of Tamil Nadu
Department of School Education,
Fort St. George,
Chennai – 600 009.
2. The Commissioner of School Education,
College Road, Chennai – 600 006.
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